

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1010

Introduced by Pankonin, 2.

Read first time January 20, 2010

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to natural resources districts; to amend
2 section 2-3234, Revised Statutes Supplement, 2009; to
3 provide procedures for the use of eminent domain for
4 trails; to provide a duty for the Revisor of Statutes; to
5 harmonize provisions; to repeal the original section; and
6 to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act are procedures
2 for the use of eminent domain by a natural resources district to
3 take private real property for a recreational trail or a connecting
4 trail.

5 Sec. 2. For purposes of sections 1 to 7 of this act:

6 (1) District means a natural resources district;

7 (2) Trail means a recreational trail or a connecting
8 trail as designated on the Nebraska Comprehensive Trails Plan under
9 section 37-1015; and

10 (3) Supermajority means seventy-five percent or more.

11 Sec. 3. Before establishing a trail, the district shall
12 consider, at a public hearing, all of the following:

13 (1) The proposed route for the trail, including maps and
14 illustrations, and the mode of travel to be permitted;

15 (2) The areas adjacent to such route to be utilized for
16 scenic, historic, natural, cultural, or developmental purposes;

17 (3) The characteristics that make the proposed route
18 suitable as a recreational trail or a connecting trail;

19 (4) The current status of the real property ownership and
20 current and potential use of the real property in and along the
21 proposed route;

22 (5) The estimated cost of acquisition of the real
23 property, or an interest therein, needed for the proposed route;

24 (6) The circumstances under which eminent domain is
25 anticipated to be used to establish the proposed trail;

1 (7) The plans for developing and maintaining the proposed
2 trail; and

3 (8) Any anticipated problems enforcing the proper use of
4 the proposed trail or hazards to private real property adjacent to
5 such trail.

6 Sec. 4. If the district decides to establish the trail
7 after following the procedure under section 3 of this act, the
8 district may acquire private real property, or an interest therein,
9 to develop and maintain the trail by:

10 (1) Negotiated agreements with and the consent of
11 the private real property owners affected by the trail before
12 establishing or allowing the establishment of such trail. The
13 consent from a private real property owner shall be willing
14 consent, not coerced in any manner by the district or any other
15 party, and shall be in writing, shall meet the requirements of
16 section 6 of this act, and shall be signed by the private real
17 property owner and the district; or

18 (2) If all reasonable efforts to acquire private real
19 property, or an interest therein, by negotiated agreement have
20 failed, the district board may, by resolution adopted by a
21 supermajority of the district board at a public meeting, elect
22 to conduct a proceeding to determine whether to use the power of
23 eminent domain to acquire such property. Such proceeding shall be
24 a public hearing with general notice to the public and specific
25 notice by registered mail to all private real property owners whose

1 property would be subject to condemnation by eminent domain. The
2 public hearing shall be held no sooner than forty-five days after
3 the date the resolution is adopted. At the public hearing, the
4 district board shall receive evidence on the question of whether
5 to acquire private property by eminent domain for the purpose
6 of constructing the trail. The district board may, by vote of a
7 supermajority of its members, elect to proceed with eminent domain
8 to acquire such property if the district board finds, by clear and
9 convincing evidence received at the public hearing, that all of the
10 following criteria are met:

11 (a) The trail has been publicized at a public hearing
12 held in accordance with section 3 of this act in the area where the
13 trail is planned and reasonable notice of the hearing was provided
14 to affected private real property owners;

15 (b) Good faith attempts to negotiate agreements meeting
16 the requirements of section 6 of this act with the affected private
17 real property owners have been made and have failed for some or
18 all of the private real property that is determined by the district
19 board to be necessary for the trail to be developed;

20 (c) All other trail route alternatives which would not
21 require the exercise of eminent domain are not viable due to
22 circumstances beyond the district's control;

23 (d) The trail route selected is the most reasonable,
24 direct, and safe alternative and is the least intrusive to private
25 real property owners as possible;

1 (e) The trail route selected minimizes the adverse
2 effects on adjacent private real property owners or persons
3 utilizing such property;

4 (f) Good faith attempts have been made to address
5 the concerns of affected private real property owners' concerns
6 regarding trail design, privacy, land protection, management, and
7 maintenance; and

8 (g) Any development and management of the trail is
9 designed to harmonize with and complement any established forest or
10 agricultural plan for the affected private real property.

11 Sec. 5. If eminent domain is approved under sections 1 to
12 7 of this act to establish a proposed trail, such eminent domain
13 shall be conducted in the manner and subject to the limitations
14 provided in sections 25-2501 to 25-2506 and 76-701 to 76-726.

15 Sec. 6. (1) A private real property owner, lessee, or
16 occupant does not owe a duty of care to a user of a trail that
17 crosses real property or is on real property owned or formerly
18 owned by the real property owner. Such private real property owner,
19 lessee, or occupant of real property affected by such a trail
20 has no responsibility for, does not incur liability for, and is
21 not liable for any injury to the person or property of a user
22 of a trail. This subsection does not apply to intentional torts
23 committed by the real property owner, lessee, or occupant.

24 (2) A negotiated written agreement between a district and
25 a private real property owner regarding the acquisition of real

1 property, or an interest therein, by the district to establish
2 and maintain a trail shall contain a limitation of liability
3 clause as provided in subsection (1) of this section and shall
4 clearly express both parties' rights and obligations, including the
5 obligation of the district to maintain the trail and the liability
6 of the district for property damage or personal injury, or both, to
7 users of the trail.

8 Sec. 7. An affected private real property owner may
9 appeal the decision of the district board to use eminent domain
10 under sections 1 to 7 of this act by petition in error to the
11 district court of the county where the affected private real
12 property is located. No petition to condemn private real property
13 affected by the proposed trail shall be filed in county court until
14 any error proceeding under this section is final.

15 Sec. 8. Section 2-3234, Revised Statutes Supplement,
16 2009, is amended to read:

17 2-3234 Except as provided in section 2-3226.11 and
18 sections 1 to 7 of this act, each district shall have the
19 power and authority to exercise the power of eminent domain when
20 necessary to carry out its authorized purposes within the limits
21 of the district or outside its boundaries. Exercise of eminent
22 domain shall be governed by the provisions of sections 76-704 to
23 76-724, except that whenever any district seeks to acquire the
24 right to interfere with the use of any water being used for power
25 purposes in accordance with sections 46-204, 70-668, 70-669, and

1 70-672 and is unable to agree with the user of such water upon
2 the compensation to be paid for such interference, the procedure
3 to condemn property shall be followed in the manner set forth in
4 sections 76-704 to 76-724 and no other property shall be included
5 in such condemnation. No district shall contract for delivery of
6 water to persons within the corporate limits of any village, city,
7 or metropolitan utilities district, nor in competition therewith
8 outside such corporate limits, except by consent of and written
9 agreement with the governing body of such political subdivision.
10 A village, city, or metropolitan utilities district may negotiate
11 and, if necessary, exercise the power of eminent domain for the
12 acquisition of water supply facilities of the district which are
13 within its boundaries.

14 Sec. 9. The Revisor of Statutes shall assign sections 1
15 to 7 of this act within Chapter 2, article 32.

16 Sec. 10. Original section 2-3234, Revised Statutes
17 Supplement, 2009, is repealed.

18 Sec. 11. Since an emergency exists, this act takes effect
19 when passed and approved according to law.